IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1538 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHANTIBHAI B PATEL - Petitioner(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
NOTICE SERVED for Petitioner(s) : 1,MR HS MUNSHAW for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 28/03/2007

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction and/or order directing the

respondent to give benefit of revision in the pay scale to the petitioner with retrospective effect and also to give the pay scale which is made available to the person who is serving as a Librarian in Government colleges.

2. The petitioner was initially appointed as Librarian in the Arts and Commerce College at Devgadh Baria on 5-7-1974 in the pay scale of Rs.300-600. It is the case on behalf of the petitioner that thereafter, he was selected by the GPSC and was appointed as Librarian in the Legal Department on 17-11-1977 in the pay scale of Rs.420-700. It is also the case on behalf of the petitioner that subsequently vide Government circular dated 6-10-1979, there was a revision of pay scale of Librarian from Rs.420-700 to Rs.550-900 and the revision of the said pay scale was made effective from 1-1-1973. It is the case on behalf of the petitioner that right from the beginning i.e. from 17-11-1977, he was in the pay scale of Rs.550-900. The grievance which has been raised in the present Special Civil Application is that the Librarians appointed in Government colleges were getting salary more than the petitioner and there was a anomaly in the pay and according to the petitioner he was entitled to the same pay scale which was made available to the person who was serving as a Librarian in the Government colleges and therefore, various representations were made by the petitioner which are referred to in the representation

dated 15-4-1993 and according to the petitioner, the said representation was not decided and therefore, the petitioner has prayed for aforesaid reliefs.

3. Shri Munshaw, learned advocate appearing on behalf of the petitioner has submitted that the petitioner as a Librarian in the Legal Department was performing the similar duty which have been preformed by the Librarians in the Government colleges and so far as the pay scale of college Librarian which was revised due to the recommendation of the UGC but when such revision is made, the persons doing the equal work will obviously entitled to get the said benefits of pay scale on the principle of “equal pay for equal work”. Therefore, it is requested to allow the present Special Civil Application.

4. The petition is opposed by the respondent. Shri DA Desail, learned AGP. While opposing the present Special Civil Application has relied upon the affidavit-in-reply filed on behalf of the respondent. It is submitted that the qualification for appointment in the Government college and any other department of the Government, more particularly, the Legal Department were different and therefore, the case of the petitioner cannot be compared with those Librarians of Government colleges. That even the representation of the petitioner has been decided and turned down by the department vide communication dated

13th June 1994. Relying upon the para 9 of the affidavit-in-reply and further relying upon the decision of the Hon'ble Supreme Court in the case ***of V. Markendeya and others V. State of Andhra Pradesh and others reported in AIR 1989 SC 1308***, it is submitted that the petitioner is not entitled to the pay scale which is given to the Librarians of the Government colleges. It is also further submitted that subsequently and after the present Special Civil Application is filed, the petitioner has joined the service of Ahmedabad Municipal Corporation and thereafter, was not serving in the Legal Department. It is also further submitted by him that subsequently even when the petitioner was in the Legal Department, he was appointed as Class II and was given the pay scale which was given to Class II officers. Therefore, it is requested to dismiss the present Special Civil Application.

5. In para 9 of the affidavit-in-reply, it is specifically denied that the academic qualifications required for the appointment as a librarian in Government colleges are similar to the qualifications required for appointment as a librarian in the Legal Department. It is further submitted in the reply that for appointment to the post of Librarian in the Legal Department, the minimum qualification required is a Bachelor degree with 2nd class in Arts, Science, Commerce or Law of a

recognized university and a degree in Library Science of a university or a institution recognized by the Government and the candidate should have practical experience of working as Librarian in Government departments or a reputed private institution/organization for not less than five years, whereas for appointment in the post of Librarian in the College is Master degree in Library Science/Information Science/documentation or an equivalent professional degree with at least 55% marks or an equivalent grade or Master's degree in Arts/Science/ Commerce or equivalent grade and Bachelor degree in Library Science/Information Science/documentation or an equivalent professional degree with at least 55% marks or its equivalent grade. Thus, the academic qualification for being appointed as Librarian in the college are quite higher than the one required for appointment as a librarian in the Legal Department. As held by the Hon'ble Supreme Court in the case of V. Markendeya (supra), where two class of employees perform identical or similar duties and carrying out the same functions with the same measure of responsibility having same academic qualifications, they would be entitled to equal pay. It is further held by the Hon'ble Supreme Court that principal of “equal pay for equal work” is not abstract one and it is open to the state to prescribe different scale of pay for different cadres having regard to nature, duties, responsibilities and educational

qualifications. It is also further held by the Hon'ble Supreme Court that different grades are laid down in service with varying qualification for entry into particular grade. Higher qualification and experience based on length of service are valid considerations for prescribing different pay scale for different cadres. It is also further held by the Hon'ble Supreme Court that if there are different qualifications, then there can be different pay scale and the principle of “equal pay for equal work” would not be applicable. In the present case, as stated above, there are different qualifications for appointment as Librarian in the Government colleges as well as Librarian in the Legal Department. Under the circumstances, the petitioner is not entitled to claim the same pay scale which was available to the Librarian in the Government colleges on the principle of equal pay for equal work. It is also further required to be noted that so far as the Librarian in Government colleges are concerned, their pay scale are on the basis of the recommendation of UGC. It is also required to be noted that subsequently the petitioner was appointed in Class II cadre and was also paid the salary which was paid to the employee in Class II cadre. Under the circumstances and considering the judgment of the Hon'ble Supreme Court referred to hereinabove, the petitioner is not entitled to any relief as prayed for.

6. For the reasons stated above, petition fails and dismissed accordingly. Rule discharged. Ad interim relief if any stands vacated forthwith. No costs.

(M.R. SHAH, J.)

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